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Sufficientarian Parenting Must be Child-Centered[1]

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ABSTRACT

Liam Shields' sufficientarian commitments mean that he should subscribe to a child-centered account of the right to parent. This point most likely generalizes: sufficientarians who acknowledge children's full moral status must embrace a child-centered account of the right to parent.

Keywords: parents, children, right to parent, sufficiency, child-centered account, dual-interest account

1. INTRODUCTION

One chapter of Liam Shields's book Just Enough concerns justice in childrearing. Shields believes that an ability to provide an adequate upbringing usually protects custodians against being stripped off their right to rear a child, even if better custodians are willing to parent that child. To argue for this conclusion, he advances his own version of a dual-interest account of the right to parent; an account that grounds the right by appeal to both children's interest in parenting and prospective parents' interest to rear. As a sufficientarian, Shields believes that children are entitled to a sufficiently good parent, rather than to the best available one and, given the importance of parenting for many people's wellbeing, he also believes that adults are entitled to an opportunity to parent.

I agree with Shields' conclusion that adequate parents cannot lose custody merely because a better parent is willing to take over. But I disagree with his argument for this conclusion. I explain why other dual-interest accounts of the right to rear – as well as child-centered accounts! – can show that, once an adequate parent has acquired custody, she or he holds

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it securely. Most importantly, I argue, Shields' sufficientarian commitments mean that he should subscribe to a child-centered account of the right to parent. The last point most likely generalizes: sufficientarians who acknowledge children's full moral status must embrace a child-centered account of the right to parent. The general form of the argument is:

P1. Children have full moral status.

C1. Therefore there is a strong prima facie presumption that one cannot claim legitimate authority over them by appeal to one's own interests.

P2. Parenting is a form of exercising a very significant amount of authority over children.

C2. Therefore, there is a strong prima facie presumption that the right to parent cannot be grounded in the interests of the right-holder.

P3. So far, the most promising attempt to show that the presumption in C2 is overridden relies on the joint belief that justice requires equal opportunity to flourish/pursue life plans and that parenting is a central and non-substitutable element of full flourishing for some people.

P4. Shields denies both elements of the joint belief in P3 and does nothing else to show that the presumption in C2 is overridden.

C3. Shields must therefore be committed to a child-centered account of the right to parent.

More generally, even if children are not entitled to more than enough, it is false that others' authority over them may be justified by appeal to the interests of those who exercise the authority.

2. THE CHALLENGE OF CUSTODY CHANGE

Imagine a child is well-settled with her biological or adoptive parents, with whom she has a loving, close, trustful and nurturing relationship; moreover, the parents provide adequately for this child's developmental needs and give her a reasonably happy childhood (I must bracket the enormous issue of how to establish who is an adequate, and who is an even better-than-adequate, parent). Now imagine that some people, who could do better on all these counts, express the intention to raise the child themselves. Is there a reason or perhaps even a duty of justice on the side of some agent, such as the state, to allow or enable the second set of adults to take over, against the current parents' will? The resolutely negative answer yielded by common sense is worthy of philosophical attention: children

are very vulnerable, they need parents in order to survive and thrive, and lack the authority to choose their own custodians. Moreover, custodians command an unusually high level of power over children. Some philosophers working on issues of justice in childrearing have considered whether, given these facts about children and childrearing, it can ever be permissible for suboptimal parents to be in charge of children's fates when better parents are available (Vallentyne 2002; Brighouse and Swift 2006; Hannan and Vernon 2008; Gheaus 2012; Brighouse and Swift 2014.) This is the literature about the grounds of the right to parent, and most of it discusses the question of how the right is acquired: (why) do adults who would make suboptimal parents have an entitlement to be parents? Shields contributes to this discussion, with a focus on cases of custody change rather than on cases of the acquisition of the right. That is, he aims to explain why it is impermissible, once a person *already* has the custody of a child and raises her adequately, to allow another person, who would (by assumption) make a better parent for the child in question, to become the legal parent of this child (Shields 2016: 22)[2].

Shields is critical of both child-centered accounts of the right to parent – that is, of theories that appeal exclusively to the interests of children – and of existing dual-interest accounts – that appeal both to the interests of the would-be parents and to those of children – such as those defended by Matthew Clayton (2006) and by Harry Brighouse and Adam Swift (2006; 2014). He thinks that child-centered accounts cannot explain the impermissibility of custody change; therefore, he seems to assume that the strongest argument in favor of the dual-interest view is that it alone can address this challenge, albeit only imperfectly in the versions developed so far (Shields 2016a, 2016b). Shields' argumentative strategy is to show why his own version of the dual-interest account yields more appealing results that existing versions.

Unlike Shields, I believe that, in fact, the custody change worry can be easily averted not only by dual-interest accounts, but also by child-centered accounts. Child-centered theorists can employ several strategies to explain why it is impermissible to allow a change in custody merely because an adult who would make a better parent for the child wants to take over. Most obviously, they can appeal to the interest of the child in continuity of care, which is such that the transition costs to a different parent are enormous. Indeed, so enormous that maybe child-centered theorists can employ this strategy in all or most cases when parents are adequate, i.e. have the moral

2 As he puts it: "The particular question I wish to answer is 'On what grounds can custodial parents usually be denied the right to rear?'" (Shields 2016a: 122).

right to parent in the first place.[3] How bad must one's parents be for a child to be better off changing custodians?

But Shields also wants us to consider cases when a change in custody would really be better for a child – that is, when the cost of severing the relationship with the initial, adequate, custodians would be lower than the gains for the child. Assume that extraordinarily good alternative parents were available to adopt her.[4] In such cases, child-centered accounts seem unable to explain why a change in custody is illegitimate. One answer to this is to bite the bullet and note that in these circumstances it is a lot less counter-intuitive that a change in custody is impermissible (especially if, indeed, only very rarely could the custody change to an extraordinarily good parent compensate for the loss of an established relationship with an adequate parent). This will not satisfy Shields, nor any of the dual-interest theorists who want to show that, independent of such empirical matters, adequate parents have a right to continue to parent.[5]

However, there is a reason why a change in custody away from adequate parents is impermissible even when the child would really be better off with extraordinarily good parents. This reason is advanced by some child-centered theorists (Vallentyne 2003). Children's interests are well served if, once acquired, the right to parent is securely held; that is, there is immunity to custody change, as long as the parent is at least adequate. Otherwise, only parents who are not too scared by the prospect of losing custody would volunteer for the role. But the prospect of losing the relationship with a beloved child is scary, and we know that good parents are loving and attached to their children. Therefore, those undeterred by the prospect of losing custody are not, in general, less likely to make very good parents[6]. So, even if a particular child, who now has an adequate parent, would, by assumption, be better off with a new parent, allowing custody changes in such cases would make most would-be adequate parents unwilling to engage in parenting. This would set back most children's interests. This is

3 Indeed, in their dual-interest account, Brighouse and Swift, too, give a lot of weight to the interest of the child in preserving the relationship with her parents, once established (2014: 96-97). The interest, on their view, is powerful enough that may justify even less than adequate parents to continue to have the child's custody.

4 For this, see some of Shields' other work (Shields 2016c).

5 Brighouse and Swift (2014: 97) employ an additional argument: they note that even in cases of abusive and neglectful parents – well below the adequacy threshold – it may be that taking the child in state custody and trying to place her with an adoptive or fostering family has poor prospects of success. But, I assume, Shields is interested in cases when a state has better records than existing states do for handling such cases.

6 At least, usually. There may be isolated cases of would-be extraordinarily good parents who would not be deterred from parenting by the prospect of losing custody to an even better parent.

a child-centered explanation why a change in custody should not be permitted merely because a would-be optimal parent is willing to parent a child who is already adequately parented. Being child-centered, it is also open to dual-interest accounts which, like Brighouse and Swift's, give the child's interests the primary role in the justification of the right to parent.

In other work, Shields provided a different line of reasoning, meant to explain why the worry concerning changes in custody can also emerge due to a requirement of equal opportunities to parent (Shields 2016c): Insofar as dual-interest accounts rely on the existence of a weighty, non-substitutable, right-generating interest to parent, they must attribute the interest – hence the right – to all would-be adequate parents, whether or not these individuals actually happen to be the custodian of a child. As egalitarians, dual-interest theorists (Brighouse and Swift 2006, 2014; Clayton 2006) must also acknowledge that the distribution of the right to parent has to be regulated by the principle of fair equality of opportunity, meaning that adults who are already the custodian of a child have no more principled entitlement to enjoy the goods of parenting than those who are not yet custodians. In short, if would-be adequate parents have such a powerful interest in parenting, then they ought to have the same opportunity to have their interest satisfied. This means that the right to parent cannot be purely negative, namely a protection against interference with current custodians' parenting their children. As Shields writes:

> "A negative right to parent would treat some people with the non-substitutable interest in parenting, those who can produce biological children, very differently from others with that very same interest, those who cannot. It would not preserve equality of opportunity to fulfill their interest in parenting" (Shields 2016c: 9).

But this worry, too, can be dispelled, even if the right to parent goes beyond a mere protection, by appeal to a general negative right to continue one's intimate relationship (Gheaus 2018)[7]. Consider an analogous case: we might have a very weighty, non-substitutable interest in finding a life partner. (Is there any reason to think that such an interest is less weighty, or more easily substitutable, than the interest in parenting?) At the same time, individuals have negative rights against being separated from their partners even in cases when there is a shortage of partners to marry, and even in cases when different individuals, out of no fault or choice of their own, have much fewer opportunities to find a partner.

7 Brighouse and Swift frame the early version of their account (2006) as an attempt to explain why only adequate parents have a right to enter the parent-child relationship. They seem to assume that it is not difficult to explain why parents have a right to continue the relationship with the child, once it has been established.

3. SUFFICIENTARIANS SHOULD NOT ENDORSE A DUAL-INTEREST ACCOUNT

I think that the most important accomplishment of dual-interest accounts lies elsewhere than in a unique ability to avert the custody change worry[8]: Their greatest advantage over child-centered accounts is that dual-interest accounts alone are capable of explaining why it is wrong to deny would-be adequate parents a right to engage in, rather than continue, parenting. In Brighouse and Swift's words:

> "No child has a right to be parented by the adult(s) who would do it best, nor do children as a whole have a right to the way of matching up children and parents that would be best for children overall. Both scenarios could leave perfectly competent parents missing out on the goods of parenting." (Brighouse and Swift 2014: 95)

As Shields (2016c) himself notes, dual-interest theorists appeal to a weighty and non-substitutable interest in parenting in order to explain why competent prospective parents are entitled to an opportunity to parent; they also presuppose an egalitarian principle of distributive justice, letting them conclude that we are entitled to equally flourishing lives rather than merely sufficiently flourishing. But, I argue below, if the interest in parenting is, in fact, substitutable, (Shields subscribes to this claim in 2016c), *or* if one endorses a sufficientarian view of justice (as Shields does in the book), it becomes impossible to explain what is wrong with denying prospective non-optimal parents the right to acquire custody. This has direct implications for allocating custody to adoptive parents and to settling custody disputes between individuals, none of whom is already attached to the child whose custody is disputed. It also has implications about any entitlement that individuals may have to become parents via subsidized IVF treatments.

To elaborate, most of us now believe that children are our moral equals except from the fact that their lack of full autonomy makes paternalistic behavior towards them permissible (indeed, required). If so, then exercising authority over children must be justified by appeal to their consent or by appeal to their own interests but not, usually, by appeal to the interests of those who exercise the authority. Children cannot give valid consent. Therefore authority over them cannot be denied to those likely to advance their interests as much as possible for the sake of advancing the interest of other prospective authority-holders. Parents have undeniable, and great,

8 Other work by Shields (2016b) reflects a similar understanding of the merits of the dual-interest accounts.

power over their children. Therefore (and assuming that it is impermissible to coerce people into the parenting role), it follows that custody ought to be allocated to the best available parent. This is the core of a child-centered account of the right to parent (Vallentyne 2003). One dual-interest theory attempts to resist this conclusion by claiming that many, or most, people, can only have fully flourishing lives if they have a chance to parent (Brighouse and Swift 2006; 2014). Another version of the dual-interest account explains departures form a child-centered account by noting that "child" and "parent" are periods within the life of the same individuals, and claiming that the loss that we incur as children by having non-optimal parents is more than made up for by the gains we enjoy by having the right to parent (Clayton 2006). This can be true only if the interest in parenting is indeed weighty and non-substitutable; otherwise, it seems more efficient to provide would-be sub-optimal parents with opportunities other than to a right to parent. Further, dual-interest theorists are egalitarians: Brighouse and Swift believe that justice entitles all of us to equal opportunities to have fully flourishing lives, and Clayton thinks that we ought to have equal opportunities to pursue our life plans. Therefore, all prospective adequate parents have a fundamental right to parent because, without it, individuals whose full flourishing or life plans require an opportunity to parent would be unjustly disadvantaged. A fundamental right to parent is grounded in the prospective parents' own interest and therefore the right holders cannot be denied custody in order to better advance children's interests (assuming an even better parent is available) or third parties' interests.

The above argumentative strategy is not open to Shields for two reasons, each of which is enough to show that he cannot endorse a dual-interest account. First, although he believes that the interest in parenting has significant weight, Shields denies that parenting is a non-substitutable path to flourishing (Shields 2016b; 2016c). Even on the assumption that the interest is non-substitutable, it is far from clear that it can justify a right: there may be several non-substitutable ways to flourishing, which are such that we cannot pursue all of them within a lifetime. The way in which you flourish through parenting cannot be substituted by the way in which you flourish by traveling the world for much of your adult years, or by the way in which you flourish by dedicating your life to doing the most good you can do, for example. But, unfortunately, you may be unable to do more than one of those things in your life. In that case, *achievable* full flourishing need not involve the pursuit of every non-substitutable path to flourishing. But if, in fact, the goods of parenting *can* be substituted, then it is quite clear that preventing an individual from parenting will not necessarily prevent her flourishing: she can always find alternative ways to flourishing,

that do not require exercising authority over another human being.

Second, and more importantly perhaps, Shields is not an egalitarian, but a sufficientarian. Even egalitarians like Brighouse and Swift may have trouble justifying a fundamental right to parent. One can doubt that the interest in parenting they identify (assuming it is indeed very weighty and non-substitutable) can generate a fundamental right to parent. A reason is that there may simply not be enough resources to go around such that we all have opportunities to have fully flourishing lives (Gheaus 2015). In this case we are not entitled to an opportunity to a fully flourishing life even on an egalitarian account; on a sufficientarian one, we aren't anyway. Another reason to be skeptical of the egalitarian version of the dual-interest accounts of the right to parent, and even more so of the sufficientarian version, is that it mandates an otherwise impermissible exercise of authority. We usually do not think that we should allow person A to exercise authority over person B for the sake of person A's interest even if there is no other way to bring person A to the level of flourishing or opportunities to which she is entitled by justice. That our intuitions diverge from this standard when it comes to exercising authority over children might be due to empirical facts which explain why adequate birth parents have a right to parent in most cases (Gheaus 2012; 2015) or to the long tradition of denying children full moral status (Gheaus 2018). Even the egalitarian version of the dual-interest account may be in trouble. But if sufficientarians are right and we are only entitled to enough, it is even less credible that we can make a derogation from the general way in which we usually think about legitimizing authority.

4. CONCLUSIONS

To sum up, if children have full moral status, that is, if they have rights/are recipients of duties of justice, then it is difficult to see why we should allow sub-optimal parents to control children's lives, unless two conditions are *jointly* met:

a. equality, rather than sufficiency, is the correct principle of justice;

and

b. there is a weighty and non-substitutable interest to parent, the fulfillment of which is necessary for full flourishing.

Shields denies both the first and the second conditions above (in 2016a and 2016b, respectively). He also wants to defend the following claim:

"in respect of deciding on the custodial arrangements of a child, the child's interests have some priority over the parent's interests until they

> are met to a sufficient extent. Thereafter the parent's interests matter more relative to the child's interests. This yields the following guidance: so long as a parent will perform well enough with respect to the child's interests, we cannot usually remove the child from that parent's custody". (Shields 2016a: 122)

I agree with his judgement of when a custody changes are legitimate, but for reasons different from those he advances. If Shields is right about sufficientarianism being the correct principle of justice, then it seems that he – like other sufficientarians – should embrace a child-centered account about the acquisition of the right to parent. The alternative would be to adopt a dual-interest account by denying children's full moral status, and that, I assume, is unappealing.

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